

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 2341 OF 2016

Shri Maruti Baburao Manjare ...Petitioner
Versus
The Land Aquisition Officer No.13 & Ors ...Respondents

Mr.PB.Shah i/b. Mr.Kayval Shah, for the Petitioner

Mr.PPKakade, AGP for the State-Respondent Nos.1 to 3.

CORAM : DR. MANJULA CHELLUR, C. J., & G.S.KULKARNI, J.

DATE : APRIL 24, 2017

JUDGMENT: (Per: G.S.Kulkarni,J.)

1. Rule returnable forthwith. Heard finally by consent of the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioner seeks a relief that the land acquisition proceedings initiated by Respondent No.1 to acquire petitioner's land bearing Gat No.457 (Old Gat No.288/1) situated at Village Pondewadi, Taluka Ambegaon, District Pune, admeasuring 8.34 Hecter (for short 'the said land') have lapsed in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013(for short '2013 Act').

3. In brief the facts are :-

The case of the petitioner is that the father of the petitioner – Late Baburao Tukaram Manjare was the owner of the land in question. He died on 12 February 1977 leaving behind the petitioner and two daughters. The land in question is an agricultural land under cultivation was the only source of livelihood for the family. On 13 December 1984, respondent No.1 published a notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the 1894 Act') which included land admeasuring 7.04 hector out of the land in question. It was proposed to be acquired for construction of 'Dimbhe irrigation project'. Thereafter, a notification under Section 6 of the 1894 Act came to be issued on 4 March 1987 and finally an award came to be made on 25 March 1987 under Section 11 of the 1894 Act whereby an amount of Rs.60,355.75 came to be awarded as compensation to the petitioner's father. After the award, the petitioner had raised an objection that alternative land be acquired, however, the same did not find response from the respondents.

4. It is the petitioner's case that a paper panchanama in regard to the said land was carried out on 23 April 1997 by the respondents. It is averred that however till date the actual and physical possession of the suit land has continued to be with the petitioner. It is stated that the respondents however have made

endorsements in the revenue record and it was shown that the land was allotted to one Sitaram Kushaba Salve a project affected person, to the extent of 1.21 hector. The petitioner, therefore, filed Rehabilitation Appeal No.62 of 2004 on 5 April 2004 before the Commissioner, Pune Region under Section 48(1) of the 1894 Act, praying that the acquisition of the land in question be withdrawn. In the said appeal, initially an interim order of stay to the acquisition of the land came to be granted by an order dated 6 April 2004. However, by an order dated 19 November 2008 the said appeal of the petitioner came to be rejected on the ground that the possession of the suit land was taken over by Respondent No.1 and, therefore, the authority lacked jurisdiction to entertain the application under Section 48(1) of the 1894 Act.

5. The Petitioner has categorically averred in paragraph (7) of the petition that Respondent No.1 has not made any attempt to take physical possession of the suit land from the petitioner even for the purpose of construction of the proposed irrigation project except preparing a paper panchanama and that the physical possession of the land continues with the petitioner. Also a specific averment is made in the petition that till the filing of this petition, the compensation amount has not been paid to the petitioner although the acquisition proceedings were initiated way back in the year 1985 culminating into an award dated 23 March 1987.

6. It is, thus, the contention of the petitioner that Section 24(2) of the 2013 Act has become applicable and thus by operation of law the acquisition proceedings have lapsed on both the counts as a consequence of the said provision namely the physical possession of the land being not taken over by the respondent as also the amount of compensation being not paid to the petitioner. In support of this contention, the petitioner has placed reliance on the decision of the Supreme Court in the case of ***“Pune Municipal Corporation & Anr. Vs.Harakchand Misirimal Solanki & Ors.”***¹.

7. On behalf of the respondents, a reply affidavit of Snehal Ravindra Barge, Deputy Collector Land Acquisition No.13, Pune is placed on record. In paragraph 2 of the affidavit, the deponent has not disputed the dates pertaining to the acquisition of the land culminating into an award being passed on 25 March 1987. The deponent has stated that a notice under Section 12(2) of the 1894 Act was issued to the petitioner whereby he was called to receive the compensation, the notice had stated that if the petitioner was to remain absent to receive compensation, the possession of the acquired land would be taken over under a panchanama. It is stated that on the date specified in the notice, the petitioner did not remain present to receive the compensation amount and therefore, the possession of the acquired land was handed over to the acquiring body under a possession receipt

¹ 2014(3) SCC 183

dated 23 April 1987. It is further stated that as the petitioner never accepted the compensation amount, the same has been deposited in the Government treasury. It is further stated that from the date of issuance of notice under Section 12(2) of the 1894 Act, the compensation has not been claimed by the Petitioner. In the reply affidavit, there is no denial of the specific case of the petitioner that physical possession of the land continues to be with the petitioner.

8. We have heard the learned Counsel for the parties and with their assistance having perused the pleadings, we find that there is much substance in the contention as urged on behalf of the petitioner that the acquisition proceedings qua the petitioner's land have lapsed by operation of law namely sub-section (2) of Section 24 of the 2013 Act. Perusal of the reply affidavit clearly indicates that the amount of compensation has not been paid to the petitioner. The law in this regard is well settled as also considered by us in the case of “*Santosh Dnyaneshwar Aher Vs.State Of Maharashtra Through Its Secretary And Ors.*”² wherein considering the decision of the Supreme Court in *Pune Municipal Corporation & Anr. Vs. Harakchand Misirimal Solanki & Ors.* (*supra*) and *Delhi Development Authority Vs. Sukhbir Singh & Ors.*³ and the decision of the Division Bench of this Court in “*Shri. Bapuso Narayan Kulkarni (deceased)*

² WP 3238 of 2015 decided on 17.1.2017

³ AIR 2016 SC 4275

through Lrs and Ors. Vs. The State of Maharashtra and Ors.”⁴, it was held that mere deposit of the amount in the government treasury was not sufficient to hold that the amount of compensation is paid to the person whose land stood acquired. Section 31 of the 1894 Act would require that the amount is required to be deposited in the Court. The provisions of Section 31(2) of the 1894 Act with regard to deposit of the compensation in the Court are mandatory in nature and the intention of the legislature is further fortified by the provisions of Sections 32, 33 and 34 of the 1894 Act.

9. In the present case, advertent to the principles of law as enunciated in the above decisions, it would be required to be held that the acquisition of the petitioner's land has lapsed in view of the provisions of Section 24(2) of the 2013 Act for non payment of compensation. We may also observe that as regards the other ground as urged under Section 24(2) of the 2013 Act namely the possession of the land being not taken over by respondents in the present case, there is no material placed on record by the respondents to show that the physical possession of the land has been taken over by the respondents. The specific case of the petitioner that he continues in possession of the land, has also not been denied in the reply affidavit. The acquisition, therefore, would lapse even on this count as well.

4 2016(3) Mh.L.J. 384

10. Resultantly, we allow the Writ Petition by the following order:-

ORDER

(I) The acquisition proceedings in relation to the land of the Petitioner bearing Gat No.457 (Old Gat No.288/1) admeasuring 7.04 Hectors situated at Village Pondewadi, Taluka-Ambegaon, District- Pune, being the subject matter of acquisition, under a Notification dated 13 March 1985 issued under Section 4 of the Land Acquisition Act,1894, stand lapsed in view of sub-section 2 of Section 24 of the Right to Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act,2013.

(II) We make it clear that the acquisition would stand lapsed only in relation to the land which is subject matter of this petition and no adjudication is made as regards the legality and validity of acquisition of other lands if any, which may form subject matter of the Award.

(III) We also clarify that if the land in question is required by the respondents for public purpose, it would be open for the respondents to acquire the same under the provisions of the Right to Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act,2013 as Section 24(2) would provide.

(IV) Rule is made absolute accordingly in the above terms.
No costs.

(G.S.KULKARNI, J.)

(CHIEF JUSTICE)